

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT LOTTO,
Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.;
EXPERIAN INFORMATION
SOLUTIONS, INC.; and EQUIFAX
INFORMATION SERVICES LLC,
Defendants.

Case No.: 2:23-cv-03015-MWF (JPRx)

**STIPULATED PROTECTIVE
ORDER**

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The Parties further acknowledge, as set forth in Section
2 12.3 below, that this Order does not entitle them to file Confidential Information
3 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
4 and the standards that will be applied when a Party seeks permission from the Court
5 to file material under seal.

6 1.2 GOOD CAUSE STATEMENT

7 This action is likely to involve trade secrets, internally developed policies and
8 procedures, confidential logs and business records, customer personal information
9 and other valuable commercial, financial, technical and/or proprietary information
10 for which special protection from public disclosure and from use for any purpose
11 other than prosecution of this action is warranted. Such confidential and proprietary
12 materials and information consist of, among other things, confidential business or
13 financial information (including documentation related to customer credit accounts
14 and credit reports, as well as records of proprietary bank operations, policies, and
15 procedures), information regarding confidential business practices, or other
16 confidential research, development, or commercial information (including
17 information implicating privacy rights of third parties), information otherwise
18 generally unavailable to the public, or which may be privileged or otherwise
19 protected from disclosure under state or federal statutes, court rules, case decisions,
20 or common law. Such information and documents include business records and
21 work logs developed, researched, drafted, created, and/or prepared internally by the
22 Parties for use in their business or trade; internal policies and procedures;
23 confidential communications, documents, or information involving private or
24 personal information of the parties or third parties; and/or documents marked
25 confidential and not made available for the public at large. Accordingly, to expedite
26 the flow of information, to facilitate the prompt resolution of disputes over
27 confidentiality of discovery materials, to adequately protect information the parties
28 are entitled to keep confidential, to ensure that the parties are permitted reasonable

1 necessary uses of such material in preparation for and in the conduct of trial, to
2 address their handling at the end of the litigation, and serve the ends of justice, a
3 protective order for such information is justified in this matter. It is the intent of the
4 parties that information will not be designated as confidential for tactical reasons
5 and that nothing be so designated without a good faith belief that it has been
6 maintained in a confidential, non-public manner, and there is good cause why it
7 should not be part of the public record of this case.

8 **2. DEFINITIONS**

9 2.1 Action: this pending federal lawsuit: *Robert Lotto v. Capital One Bank*
10 *USA, N.A. et al.*, Case No. 2:23-cv-03015-MWF-JPR.

11 2.2 Challenging Party: a Party or Nonparty that challenges the designation
12 of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored, or maintained) or tangible things that qualify for
15 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
16 Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
18 their support staff).

19 2.5 Designating Party: a Party or Nonparty that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
28 an expert witness or as a consultant in this action.

1 2.8 House Counsel: attorneys who are employees of a Party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Nonparty: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 Party to this Action but are retained to represent or advise a Party and have appeared
8 in this Action on behalf of that Party or are affiliated with a law firm that has
9 appeared on behalf of that Party, including support staff.

10 2.11 Party: any Party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Nonparty that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (for example, photocopying, videotaping, translating, preparing
17 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above) but also any information copied or extracted
26 from Protected Material; all copies, excerpts, summaries, or compilations of
27 Protected Material; and any testimony, conversations, or presentations by Parties or
28 their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial will be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order will remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition is the later
7 of (1) dismissal of all claims and defenses in this Action, with or without prejudice,
8 or (2) final judgment after the completion and exhaustion of all appeals, rehearings,
9 remands, trials, or reviews of this Action, including the time limits for filing any
10 motions or applications for extension of time under applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Each Party or Nonparty that designates information or items for
13 protection under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (for example, to unnecessarily encumber the case-development process or
22 to impose unnecessary expenses and burdens on other parties) may expose the
23 Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items it
25 designated for protection do not qualify for that level of protection, that Designating
26 Party must promptly notify all other Parties that it is withdrawing the inapplicable
27 designation.
28

1 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
2 Material that qualifies for protection under this Order must be clearly so designated
3 before the material is disclosed or produced.

4 Designation in conformity with this Order requires the following:

5 (a) for information in documentary form (for example, paper or electronic
6 documents but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the Producing Party must affix at a minimum the legend
8 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
9 or portions of the material on a page qualify for protection, the Producing Party
10 must clearly identify the protected portion(s) (for example, by making appropriate
11 markings in the margins).

12 A Party or Nonparty that makes original documents available for
13 inspection need not designate them for protection until after the inspecting Party has
14 indicated which documents it would like copied and produced. During the
15 inspection and before the designation, all material made available for inspection
16 must be treated as “CONFIDENTIAL.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine which
18 documents, or portions thereof, qualify for protection under this Order. Then,
19 before producing the specified documents, the Producing Party must affix the
20 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualify for protection, the Producing
22 Party also must clearly identify the protected portion(s) (for example, by making
23 appropriate markings in the margins).

24 (b) for testimony given in depositions, the Designating Party must identify
25 the Disclosure or Discovery Material that is protected on the record, before the close
26 of the deposition.

27 (c) for information produced in some form other than documentary and for
28 any other tangible items, the Producing Party must affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
 2 “CONFIDENTIAL.” If only a portion or portions of the information warrant
 3 protection, the Producing Party, to the extent practicable, must identify the protected
 4 portion(s).

5 5.3 If timely corrected, an inadvertent failure to designate qualified
 6 information or items does not, standing alone, waive the Designating Party’s right to
 7 secure protection under this Order for that material. On timely correction of a
 8 designation, the Receiving Party must make reasonable efforts to assure that the
 9 material is treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Any Party or Nonparty may challenge a designation of confidentiality
 12 at any time consistent with the Court’s scheduling order.

13 6.2 The Challenging Party must initiate the dispute-resolution process (and,
 14 if necessary, file a discovery motion) under Local Rule 37.

15 6.3 The burden of persuasion in any such proceeding is on the Designating
 16 Party. Frivolous challenges, and those made for an improper purpose (for example,
 17 to harass or impose unnecessary expenses and burdens on other parties), may expose
 18 the Challenging Party to sanctions. Unless the Designating Party has waived or
 19 withdrawn the confidentiality designation, all parties must continue to afford the
 20 material in question the level of protection to which it is entitled under the
 21 Producing Party’s designation until the Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 A Receiving Party may use Protected Material that is disclosed or
 24 produced by another Party or by a Nonparty in connection with this Action only for
 25 prosecuting, defending, or attempting to settle this Action. Such Protected Material
 26 may be disclosed only to the categories of people and under the conditions described
 27 in this Order. When the Action has been terminated, a Receiving Party must comply
 28 with the provisions of Section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a manner sufficiently secure to ensure that access is limited to the
3 people authorized under this Order.

4 7.2 Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated “CONFIDENTIAL” only to the following people:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
8 well as employees of that Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses and attorneys for witnesses to
23 whom disclosure is reasonably necessary, provided that the deposing party requests
24 that the witness sign the form attached as Exhibit A hereto and the witnesses will
25 not be permitted to keep any confidential information unless they sign the form,
26 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
27 transcribed deposition testimony or exhibits to depositions that reveal Protected
28

1 Material may be separately bound by the court reporter and may not be disclosed to
2 anyone except as permitted under this Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed on by any of the Parties engaged in settlement discussions or
5 appointed by the Court.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must

11 (a) promptly notify in writing the Designating Party. Such notification
12 must include a copy of the subpoena or court order unless prohibited by law;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the
15 subpoena or order is subject to this Protective Order. Such notification must include
16 a copy of this Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order should not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination on the protective-order request
22 by the relevant court unless the Party has obtained the Designating Party’s
23 permission. The Designating Party bears the burden and expense of seeking
24 protection of its Confidential Material, and nothing in these provisions should be
25 construed as authorizing or encouraging a Receiving Party in this Action to disobey
26 a lawful directive from another court.

27 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE
28 PRODUCED IN THIS LITIGATION

1 (a) The terms of this Order are applicable to information produced by a
2 Nonparty in this Action and designated as “CONFIDENTIAL.” Such information is
3 protected by the remedies and relief provided by this Order. Nothing in these
4 provisions should be construed as prohibiting a Nonparty from seeking additional
5 protections.

6 (b) In the event that a Party is required by a valid discovery request to
7 produce a Nonparty’s Confidential Information in its possession and the Party is
8 subject to an agreement with the Nonparty not to produce the Nonparty’s
9 Confidential Information, then the Party must

10 (1) promptly notify in writing the Requesting Party and the Nonparty
11 that some or all of the information requested is subject to a confidentiality
12 agreement with a Nonparty;

13 (2) promptly provide the Nonparty with a copy of this Order, the
14 relevant discovery request(s), and a reasonably specific description of the
15 information requested; and

16 (3) make the information requested available for inspection by the
17 Nonparty, if requested.

18 (c) If the Nonparty fails to seek a protective order within 21 days of
19 receiving the notice and accompanying information, the Receiving Party may
20 produce the Nonparty’s Confidential Information responsive to the discovery
21 request. If the Nonparty timely seeks a protective order, the Receiving Party must
22 not produce any information in its possession or control that is subject to the
23 confidentiality agreement with the Nonparty before a ruling on the protective-order
24 request. Absent a court order to the contrary, the Nonparty must bear the burden
25 and expense of seeking protection of its Protected Material.

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Order, the Receiving Party must immediately notify the Designating Party in writing
2 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized
3 copies of the Protected Material, inform the person or people to whom unauthorized
4 disclosures were made of the terms of this Order, and ask that person or people to
5 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
6 as Exhibit A.

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other protection,
11 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
12 Procedure 26(b)(5)(B).

13 12. MISCELLANEOUS

14 12.1 Nothing in this Order abridges the right of any person to seek its
15 modification by the Court.

16 12.2 By stipulating to the entry of this Order, no Party waives any right it
17 otherwise would have to object to disclosing or producing any information or item
18 on any ground not addressed in this Order. Similarly, no Party waives any right to
19 object on any ground to use in evidence of any of the material covered by this
20 Order.

21 12.3 A Party that seeks to file under seal any Protected Material must
22 comply with Civil Local Rule 79-5. Protected Material may be filed under seal only
23 pursuant to a court order authorizing the sealing of the specific Protected Material at
24 issue. If a Party's request to file Protected Material under seal is denied, then the
25 Receiving Party may file the information in the public record unless otherwise
26 instructed by the Court.

27 13. FINAL DISPOSITION
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1 After the final disposition of this Action, as defined in paragraph 4, within 60
2 days of a written request by the Designating Party, each Receiving Party must return
3 all Protected Material to the Producing Party or destroy such material. As used in
4 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
5 summaries, and any other format reproducing or capturing any of the Protected
6 Material. Whether the Protected Material is returned or destroyed, the Receiving
7 Party must submit a written certification to the Producing Party (and, if not the same
8 person or entity, to the Designating Party) by the 60-day deadline that identifies (by
9 category, when appropriate) all the Protected Material that was returned or
10 destroyed and affirms that the Receiving Party has not retained any copies, abstracts,
11 compilations, summaries, or any other format reproducing or capturing any of the
12 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
13 archival copy of all pleadings; motion papers; trial, deposition, and hearing
14 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert
15 reports; attorney work product; and consultant and expert work product even if such
16 materials contain Protected Material. Any such archival copies that contain or
17 constitute Protected Material remain subject to this Order as set forth in Section 4
18 (DURATION).

19 **14. SANCTIONS**

20 Any willful violation of this Order may be punished by civil or criminal
21 contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or
22 other appropriate action at the discretion of the Court.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: July 18, 2023

/s/Garrett Charity
MCCARTHY LAW, PLC
Garrett Charity
Attorneys for Plaintiff Robert Lotto

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7 DATED: July 18, 2023

/s/Wendy Qiu¹
Holland & Knight LLP
Wendy Qiu
Attorneys for Defendant

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11 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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13 DATED: 7/20/2023


JEAN P. ROSENBLUTH
U.S. MAGISTRATE JUDGE

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¹ Pursuant to L.R. 5-4.3.4., I, Wendy Qiu, hereby attest that all the signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
 [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the U.S. District Court for the Central District of California on [date] in the case of *Robert Lotto v. Capital One Bank USA, N.A. et al.*, Case No. 2:23-cv-03015-MWF-JPR. I agree to comply with and to be bound by all terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment, including contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____